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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 RANDALL LAWRENCE and  
12 MICHAEL McCONNEL,

13 Plaintiffs,

14 vs.

15 UNITED STATES DEPARTMENT  
16 OF THE TREASURY; UNITED  
STATES BUREAU OF THE MINT;  
and THE UNITED STATES OF  
AMERICA,

17 Defendants.

Civil No. 14cv594-WQH-MDD  
ORDER

18 HAYES, Judge:

19 The matter before the Court is Plaintiff's Motion for Leave to File First Amended  
20 Complaint. (ECF No. 11).

21 **BACKGROUND**

22 On March 14, 2014, Plaintiffs Randall Lawrence and Michael McConnell  
23 initiated this action by filing a Complaint for Declaratory Judgment ("Complaint") in  
24 this Court. (ECF No. 1). On July, 23, 2014, this Court submitted an Order granting  
25 Defendants Motion to Dismiss on the grounds that the Complaint failed to allege  
26 sufficient facts to support the legal conclusions that Plaintiffs are the "owners" of the  
27 Aluminum Cent, with a "legal right to have their coin sold at public auction," and that  
28 "the Government's claim to Plaintiffs' Aluminum Cent is invalid." (ECF No. 10 at 5).

On August 21, 2014, Plaintiffs filed a Motion for Leave to File First Amended

1 Complaint (ECF No. 11) which is the operative pleading. On September 8, 2014,  
 2 Defendants filed an opposition. (ECF No. 14). On September 15, 2014, Plaintiffs filed  
 3 a reply. (ECF No. 15).

#### 4 **CONTENTIONS OF PARTIES**

5 Plaintiffs contend that the proposed First Amended Complaint (“FAC”) amends  
 6 the allegations found in the Complaint to allege specifically the manner in which  
 7 Plaintiffs came into possession of the Aluminum Cent, as well as the manner in which  
 8 Plaintiff Lawrence’s father, Harry Lawrence, came into possession of the coin. (ECF  
 9 No. 11 at 3). Plaintiffs contend that the FAC further amends the allegations of the  
 10 Complaint to plead the specific grounds upon which Plaintiffs allege their superior title  
 11 to the Aluminum Cent, including three statutory presumptions attaching under  
 12 California state law. (ECF No. 11 at 3-4). Plaintiffs further contend that the proposed  
 13 FAC amends the allegations of the Complaint to include information of the sale at  
 14 public auction, subsequent to the filing of the original Complaint, of experimental 1921  
 15 and 1922 U.S. Peace Dollars created for and kept by then-U.S. Mint Director Raymond  
 16 T. Baker. (ECF No. 11 at 4).

17 Defendants contend that leave to amend would be futile because the proposed  
 18 amended complaint suffers from the same deficiencies described by the Court in its  
 19 order dismissing the Complaint for failure to state a claim under Fed. R. Civ. P.  
 20 12(b)(6). (ECF No. 14 at 6.). Defendants contend that Plaintiffs have not asserted –  
 21 and cannot assert – any facts that would support any scenario under which they could  
 22 plausibly be in lawful possession of the subject piece. *Id.* Defendants further contend  
 23 that the proposed amended complaint fails to allege sufficient facts to support its mere  
 24 legal conclusions that Plaintiffs are the “owners” of the piece, with a “legal right to have  
 25 their coin sold at public auction,” and that “the Government’s claim to Plaintiffs’  
 26 Aluminum Cent is invalid.” *Id.*

#### 27 **RULING OF COURT**

28 Federal Rule of Civil Procedure 15 mandates that leave to amend “be freely given

1 when justice so requires.” Fed. R. Civ. P. 15(a). “This policy is to be applied with  
2 extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th  
3 Cir. 2003) (quotation omitted). In determining whether to allow an amendment, a court  
4 considers whether there is “undue delay,” “bad faith,” “undue prejudice to the opposing  
5 party,” or “futility of amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). “Not  
6 all of the [*Foman*] factors merit equal weight.... [I]t is the consideration of prejudice  
7 to the opposing party that carries the greatest weight.” *Eminence Capital*, 316 F.3d at  
8 1052 (citation omitted). “The party opposing amendment bears the burden of showing  
9 prejudice.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).  
10 “Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there  
11 exists a *presumption* under Rule 15(a) in favor of granting leave to amend.” *Eminence*  
12 *Capital*, 316 F.3d at 1052.

13 After review of the motion, the proposed first amended complaint, and the filings  
14 of the parties, the Court concludes that Defendants have not made a sufficiently strong  
15 showing of the *Foman* factors to overcome the presumption under Rule 15(a) in favor  
16 of granting leave to amend. *See Eminence Capital*, 316 F.3d at 1052. The Court will  
17 defer consideration of any challenge to the merits of the proposed first amended  
18 complaint until after the amended pleading is filed. *See Netbula v. Distinct Corp.*, 212  
19 F.R.D. 534, 539 (N.D. Cal. 2003) (“Ordinarily, courts will defer consideration of the  
20 challenges to the merits of a proposed amended pleading until after leave to amend is  
21 granted and the amended pleading is filed.”).

22 IT IS HEREBY ORDERED that the Motion for Leave to File First Amended  
23 Complaint is GRANTED. (ECF No. 11). Plaintiff shall file the proposed first amended  
24 complaint attached to the motion within ten (10) days of the date of this Order.

25 DATED: December 8, 2014

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27 **WILLIAM Q. HAYES**  
28 United States District Judge